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December 19, 2003

BY HAND-DELIVERY

Mr. Mark J. Langer
Clerk, United States Court of Appeals
for the District of Columbia Circuit
United States Courthouse
Room 5423
Third & Constitution Avenue, N.W.
Washington, D.C. 20001

Re: Cobell v. Norton,
No. 03-5314

Dear Mr. Langer:

Defendants-Appellants, the Secretary of the Interior, et al., hereby respond to the Rule 28(j) letter submitted by Plaintiffs-Appellees on December 11, 2003.

Plaintiffs' letter brings to the Court's attention the "Fourth Report Card on Computer Security at Federal Departments and Agencies," dated December 9, 2003, issued by the House Subcommittee on Technology, Information Policy, Intergovernmental Relations and the Census. The "report card" graded the overall computer security of the Department of the Interior as "F."

The relevance of this filing is unclear. This is an appeal from the district court's Structural Injunction issued on September 25, 2003. As discussed in our pending motion for a stay pending appeal, the district court at no point had authority to issue a Structural Injunction, and the injunction is also wholly inconsistent with recent legislation. Nothing in the cited "report card" has any bearing on that analysis.

To place in perspective the grade accorded to Interior, it should be noted that the "report card" also awarded an "F" to the

Department of Justice, the Department of Homeland Security, the Department of State, the Department of Energy, the Department of Housing and Urban Development, the Department of Health and Human Services, and the Department of Agriculture. See Attachments to Plaintiffs-Appellees' Rule 28(j) Letter.

Plaintiffs complain that they have not yet been provided with copies of reports underlying the Report Card. This complaint has no bearing on the appeal before the Court. In any event, the disclosure of the underlying reports raises significant security concerns, and is the subject of a recent district court decision in this case. See Order, No. 96-1285(RCL) (D.D.C. Dec. 11, 2003).

Finally, plaintiffs' letter underscores the appropriateness of consolidating this appeal with the government's appeal in No. 03-5262, arising from the district court's July 28, 2003, preliminary injunction regarding information security. The consolidation motion is pending before the Court.

Enclosed please find copies of this letter for distribution to the panel.

Thank you for your cooperation in this matter.

Yours very truly,

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